

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

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| UNITED STATES OF AMERICA, et al., | : | CASE NO.: 1:02-107 |
| | : | |
| Plaintiffs, | : | JUDGE S. ARTHUR SPIEGEL |
| | : | MAGISTRATE HOGAN |
| v. | : | |
| | : | RESPONSE TO WASHINGTON |
| | : | REQUEST FOR REVIEW |
| BOARD OF HAMILTON COUNTY COMMISSIONERS, et al. | : | |
| | : | |
| Defendants. | : | |

The City and County Defendants ("MSD") respond to Charles Thompson's Motion for Review (Doc #107) as follows:

1. The MSD investigated Mr. Thompson's claim through the City of Cincinnati's claims office. The City's Claims Administrator is Shirley Lenzly.
2. The MSD determined that a major rainstorm caused Mr. Thompson's backup on June 2, 2007 caused the sewer system in some areas to overload. Even though this area had no previous MSD capacity complaint history, the MSD determined to pay the claim because the storm created a capacity problem of the sewer system. (Attached November 6, 2007, MDS Letter, Exhibit D).
3. Mr. Thompson provided estimates for both tile removal and carpet replacement as well an itemized list of personal property damaged. However, Mr. Thompson did not submit any proof the of the value of the lost items.
4. The MSD's offer did not include included the amount for drywall repair (\$700.00) and carpet replacement (\$3,694.95). The MSD offer (approximately

\$1,414.00) was for personal items, excluding the wedding dress, and other items not previously included in Mr. Thompson's estimate.

5. The City of Cincinnati made a final settlement offer to Mr. Thompson of \$1,414.00. The City made this offer in part because Mr. Thompson lost primarily personal clothing and furniture items which depreciate at a rate of 20% annual. Moreover, the adequate measure of loss is fair market value at the time of the loss and not replacement value.

6. The photographs submitted by Mr. Thompson do not support an amount of \$ 18,000.00 or \$10,484.00 for the damaged clothing, furniture, etc. The City asserts its initial offer was very low. After reviewing the itemized list including the additional items submitted by Mr. Thompson, the City is revising its offer to \$7,000.00 for full and final settlement of this WIB claim.

Accordingly, the MDS defendants request that the Court separately review the claimed damages, and that thereafter the City be allowed to tender its settlement for \$7,000.00.

Respectfully submitted,

JULIA L. MCNEIL (0043535)
City Solicitor

/s/ Nicole L. Sanders
Nicole L. Sanders, (0077186)
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Trial attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2007 a true and accurate copy of the foregoing Response was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Nicole L. Sanders
Nicole L. Sanders (0077186)
Assistant City Solicitor



**METROPOLITAN SEWER DISTRICT
OF GREATER CINCINNATI**

1600 Gest Street
Cincinnati, Ohio 45204
513-244-1300
www.msdc.org

Robert J. Campbell, P.E., DEE
Director

James A. Parrott
Deputy Director

November 6, 2007

Dear MSD Customer,

On June 2, 2007, areas on the west side of Hamilton County experienced a major rain event that caused the sewer system in some of those areas to become overloaded. As a result, multiple homes experienced water-in-basement through floor drains or toilets. The rain event that occurred on that day was well beyond what the sewer system was originally designed to handle. In January 2004 MSD created a program called the "Water in Basement Prevention Program" or WIBPP to protect properties that suffer from chronic sewer back ups or whenever the public main sewer system would become overloaded due to a lack of capacity.

The June 2, 2007 storm was determined to be greater than a "100-year Storm". This means that statistically, there is less than a 1% chance of a storm of this magnitude occurring in a given year. MSDGC sewers are typically built to convey smaller, more frequent storms. Subsequent to the June 2, 2007 storm, your property was reviewed to determine if it met criteria that would make it eligible for inclusion into the WIBPP. Your home and the sewer system in the area affected on June 2 have no previous MSD complaint history of capacity problems, from the public main sewer. MSD is currently performing a "Level of Service" study, which will help us to determine if the sewer system in your area is adequately sized to convey the stormwater.

MSD is offering a solution until the "Level of Service" issue is resolved for your home, and others, that did experience a back up because of the June 2 rain event. This solution is considered a "temporary" solution, in that if the sewer system in your area is deemed to not meet an appropriate "Level of Service", a capital project would be initiated to upgrade the sewers. If you are interested in this solution to protect your home, please contact the MSD consultant that manages the WIBPP for MSD, R.D. Zande and advise them you would like to consider the temporary protection MSD is offering.

R.D. Zande & Associates Inc.
Contact person: Mandy Geier
Phone: 769-5009

Sincerely,

Gary H. Mills
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